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Attorney for Defendant
TIG INSURANCE COMPANY
ERRONEOUSLY SUED HEREIN AS
TIG SPECIALTY INSURANCE COMPANY

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AIU INSURANCE COMPANY, a New York
corporation,

Plaintiff,

vs.

ACCEPTANCE INSURANCE COMPANY, a
Delaware corporation, TIG SPECIALTY
INSURANCE COMPANY, a California
corporation, ROYAL INSURANCE COMPANY
OF AMERICA, a Delaware corporation,
AMERICAN SAFETY RISK RETENTION
GROUP, IND., a Vermont corporation, and
DOES 1 through 10, inclusive,

Defendants.

No. C 07-05491 EDL

**ANSWER OF DEFENDANT TIG
INSURANCE COMPANY TO PLAINTIFF
AIU INSURANCE COMPANY'S FIRST
AMENDED COMPLAINT**

Defendant TIG Insurance Company ("TIG"), erroneously sued herein as TIG Specialty Insurance Company, answers the allegations contained in the First Amended Complaint (the "Complaint") brought by Plaintiff AIU Insurance Company ("Plaintiff" or "AIU") as follows:

1. Answering the allegations contained in Paragraph 1 of Plaintiff's Complaint, TIG is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

1 2. Answering the allegations contained in Paragraph 2 of Plaintiff's Complaint, TIG
2 admits that some of the underlying lawsuits are alleged to have occurred in the County of San Mateo.
3 Except as expressly admitted herein, the remainder of Paragraph 2 does not call for an admission or a
4 denial.

5 3. Answering the allegations contained in Paragraph 3 of Plaintiff's Complaint, TIG is
6 without sufficient knowledge or information to form a belief as to the truth of the allegations
7 contained in said paragraph, and on that basis denies each and every remaining allegation contained
8 therein.

9 4. Answering the allegations contained in Paragraph 4 of Plaintiff's Complaint, TIG is
10 without sufficient knowledge or information to form a belief as to the truth of the allegations
11 contained in said paragraph, and on that basis denies each and every remaining allegation contained
12 therein.

13 5. Answering the allegations contained in Paragraph 5 of Plaintiff's Complaint, TIG is
14 without sufficient knowledge or information to form a belief as to the truth of the allegations
15 contained in said paragraph, and on that basis denies each and every remaining allegation contained
16 therein.

17 6. Answering the allegations contained in Paragraph 6 of Plaintiff's Complaint, TIG
18 admits that it is a California Corporation, authorized to do, and doing business in California. Contrary
19 to the allegations of Complaint, TIG's principal place of business is Manchester, New Hampshire.
20 TIG also admits that it is engaged in the business of insurance and is admitted in the State of
21 California to transact the business of insurance. Except as expressly admitted herein, TIG denies the
22 remaining allegations of this paragraph.

23 7. Answering the allegations contained in Paragraph 7 of Plaintiff's Complaint, TIG is
24 without sufficient knowledge or information to form a belief as to the truth of the allegations
25 contained in said paragraph, and on that basis denies each and every remaining allegation contained
26 therein.

1 8. Answering the allegations contained in Paragraph 8 of Plaintiff's Complaint, TIG is
2 without knowledge or information sufficient to form a belief as to the truth of those allegations and
3 thus denies the same.

4 9. Answering the allegations contained in Paragraph 9 of Plaintiff's Complaint, TIG is
5 without knowledge or information sufficient to form a belief as to the truth of those allegations and
6 thus denies the same.

7 10. Answering the allegations contained in Paragraph 10 of Plaintiff's Complaint, TIG is
8 without knowledge or information sufficient to form a belief as to the truth of those allegations and
9 thus denies the same.

10 11. Answering the allegations contained in Paragraph 11 of Plaintiff's Complaint, TIG is
11 without knowledge or information sufficient to form a belief as to the truth of those allegations and
12 thus denies the same.

13 12. Answering the allegations contained in Paragraph 12 of Plaintiff's Complaint, TIG
14 alleges affirmatively that the terms and conditions of AIU's policies attached as Exhibits A and B to
15 the Complaint speak for themselves. TIG otherwise denies any and all remaining allegations
16 contained in paragraph 12 of Plaintiff's Complaint.

17 13. Answering the allegations contained in Paragraph 13 of Plaintiff's Complaint, TIG
18 alleges affirmatively that the terms and conditions of AIU's policies attached as Exhibits A and B to
19 the Complaint speak for themselves. TIG otherwise denies any and all remaining allegations
20 contained in paragraph 13 of Plaintiff's Complaint.

21 14. Answering the allegations contained in Paragraph 14 of Plaintiff's Complaint, TIG
22 affirmatively alleges that the terms and conditions of the Acceptance Primary Policies attached as
23 Exhibits C, D, E and F to the Complaint speak for themselves. However, TIG is without sufficient
24 knowledge or information to form a belief as to the truth of the allegations contained in said
25 paragraph, and on that basis denies each and every allegation contained therein.

26 15. Answering the allegations contained in Paragraph 15 of Plaintiff's Complaint, TIG
27 admits that it issued policy No. 31352800, effective March 1, 1995 to March 1, 1996 to Rylock. The
28

1 TIG policy provides limits of \$1 million per occurrence subject to \$2 million in the aggregate for
2 products/completed operations.

3 16. Answering the allegations contained in Paragraph 16 of Plaintiff's Complaint, TIG
4 affirmatively alleges that the terms and conditions of the Royal Primary Policies attached as Exhibits
5 H, I, J and K to the Complaint speak for themselves. However, TIG is without sufficient knowledge
6 or information to form a belief as to the truth of the allegations contained in said paragraph, and on
7 that basis denies each and every allegation contained therein.

8 17. Answering the allegations contained in Paragraph 17 of Plaintiff's Complaint, TIG
9 affirmatively alleges that the terms and conditions of the American Safety Primary Policies attached
10 as Exhibits L and M to the Complaint speak for themselves. However, TIG is without sufficient
11 knowledge or information to form a belief as to the truth of the allegations contained in said
12 paragraph, and on that basis denies each and every allegation contained therein.

13 18. Answering the allegations contained in Paragraph 18 of Plaintiff's Complaint, TIG
14 affirmatively alleges that the terms and conditions of the American Safety Primary Policies attached
15 as Exhibits L and M to the Complaint speak for themselves. However, TIG is without sufficient
16 knowledge or information to form a belief as to the truth of the allegations contained in said
17 paragraph, and on that basis denies each and every allegation contained therein.

18 19. Answering the allegations contained in Paragraph 19 of Plaintiff's Complaint, TIG is
19 without sufficient knowledge or information to form a belief as to the truth of the allegations
20 contained in said paragraph, and on that basis denies each and every allegation contained therein.

21 20. Answering the allegations contained in Paragraph 20 of Plaintiff's Complaint, TIG
22 admits Rylock was engaged in the business of window manufacturing. TIG also admits that Rylock
23 windows were installed in numerous homes in California. TIG also admits that Rylock has been
24 named as a defendant and/or cross-defendant in litigation in which homeowners have alleged that
25 Rylock's windows were defective and that such defects led to water intrusion resulting in property
26 damage. Except as expressly admitted herein, TIG is without knowledge or information sufficient to
27 form a belief as to the truth of those allegations and thus denies the same.
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1 21. Answering the allegations contained in Paragraph 21 of Plaintiff's Complaint, TIG
2 admits that Rylock has tendered the defense and indemnity of certain matters to TIG. Except as
3 expressly admitted herein, TIG is without sufficient knowledge or information to form a belief as to
4 the truth of the allegations contained in said paragraph, and on that basis denies each and every
5 allegation contained therein.

6 22. Answering the allegations contained in Paragraph 22 of Plaintiff's Complaint, TIG is
7 without sufficient knowledge or information to form a belief as to the truth of the allegations
8 contained in said paragraph, and on that basis denies each and every allegation contained therein.

9 23. Answering the allegations contained in Paragraph 23 of Plaintiff's Complaint, TIG
10 admits that Rylock has designated the Royal policies to respond to at least some of the claims in
11 certain matters. Except as expressly admitted herein, TIG is without sufficient knowledge or
12 information to form a belief as to the truth of the allegations contained in said paragraph, and on that
13 basis denies each and every allegation contained therein.

14 24. Answering the allegations contained in Paragraph 24 of Plaintiff's Complaint, TIG is
15 without sufficient knowledge or information to form a belief as to the truth of the allegations
16 contained in said paragraph, and on that basis denies each and every allegation contained therein.

17 25. Answering the allegations contained in Paragraph 25 of Plaintiff's Complaint, TIG is
18 without sufficient knowledge or information to form a belief as to the truth of the allegations
19 contained in said paragraph, and on that basis denies each and every allegation contained therein.

20 26. Answering the allegations contained in Paragraph 26 of Plaintiff's Complaint, TIG
21 incorporates by reference its answers to Paragraphs 1 through 25 as though fully set forth herein.

22 27. Answering the allegations contained in Paragraph 27 of Plaintiff's Complaint, TIG is
23 without knowledge or information sufficient to form a belief as to the truth of the allegations
24 contained therein and thus denies the same.

25 28. The allegations contained in Paragraph 28 of Plaintiff's Complaint do not call for an
26 admission or a denial from TIG.

1 29. Answering the allegations contained in Paragraph 29 of Plaintiff's Complaint, TIG is
2 without knowledge or information sufficient to form a belief as to the truth of the allegations
3 contained therein and thus denies the same.

4 30. Answering the allegations contained in Paragraph 30 of Plaintiff's Complaint, TIG
5 incorporates by reference its answers to Paragraphs 1 through 29 as though fully set forth herein.

6 31. Answering the allegations contained in Paragraph 31 of Plaintiff's Complaint, TIG is
7 without sufficient knowledge or information to form a belief as to the truth of the allegations
8 contained in said paragraph, and on that basis denies each and every allegation contained therein.

9 32. The allegations contained in Paragraph 32 of Plaintiff's Complaint do not call for an
10 admission or a denial from TIG.

11 33. Answering the allegations contained in Paragraph 33 of Plaintiff's Complaint, TIG is
12 without sufficient knowledge or information to form a belief as to the truth of the allegations
13 contained in said paragraph, and on that basis denies each and every allegation contained therein.

14 34. The allegations contained in Paragraph 34 of Plaintiff's Complaint do not call for an
15 admission or a denial from TIG.

16 35. Answering the allegations contained in Paragraph 35 of Plaintiff's Complaint, TIG is
17 without sufficient knowledge or information to form a belief as to the truth of the allegations
18 contained in said paragraph, and on that basis denies each and every allegation contained therein.

19 36. Answering the allegations contained in Paragraph 36 of Plaintiff's Complaint, TIG
20 incorporates by reference its answers to Paragraphs 1 through 35 as though fully set forth herein.

21 37. Answering the allegations contained in Paragraph 37 of Plaintiff's Complaint, TIG is
22 without sufficient knowledge or information to form a belief as to the truth of the allegations
23 contained in said paragraph, and on that basis denies each and every allegation contained therein.

24 38. Answering the allegations contained in Paragraph 38 of Plaintiff's Complaint, TIG is
25 without sufficient knowledge or information to form a belief as to the truth of the allegations
26 contained in said paragraph, and on that basis denies each and every allegation contained therein.

27 39. The allegations contained in Paragraph 39 of Plaintiff's Complaint do not call for an
28 admission or a denial from TIG.

1 40. Answering the allegations contained in Paragraph 40 of Plaintiff's Complaint, TIG is
2 without sufficient knowledge or information to form a belief as to the truth of the allegations
3 contained in said paragraph, and on that basis denies each and every allegation contained therein.

4 41. Answering the allegations contained in Paragraph 41 of Plaintiff's Complaint, TIG
5 incorporates by reference its answers to Paragraphs 1 through 40 as though fully set forth herein.

6 42. Answering the allegations contained in Paragraph 42 of Plaintiff's Complaint, TIG
7 denies each and every allegation contained therein.

8 43. Answering the allegations contained in Paragraph 43 of Plaintiff's Complaint, TIG
9 denies each and every allegation contained therein.

10 44. Answering the allegations contained in Paragraph 44 of Plaintiff's Complaint, TIG
11 incorporates by reference its answers to Paragraphs 1 through 43 as though fully set forth herein.

12 45. Answering the allegations contained in Paragraph 45 of Plaintiff's Complaint, TIG
13 denies each and every allegation contained therein.

14 46. Answering the allegations contained in Paragraph 46 of Plaintiff's Complaint, TIG
15 incorporates by reference its answers to Paragraphs 1 through 45 as though fully set forth herein.

16 47. Answering the allegations contained in Paragraph 47 of Plaintiff's Complaint, TIG is
17 without sufficient knowledge or information to form a belief as to the truth of the allegations
18 contained in said paragraph, and on that basis denies each and every allegation contained therein.

19 48. Answering the allegations contained in Paragraph 48 of Plaintiff's Complaint, TIG is
20 without sufficient knowledge or information to form a belief as to the truth of the allegations
21 contained in said paragraph, and on that basis denies each and every allegation contained therein.

22 49. The allegations contained in Paragraph 49 of Plaintiff's Complaint do not call for an
23 admission or a denial from TIG.

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25 **AFFIRMATIVE DEFENSES**

26 TIG asserts the following affirmative defenses to Plaintiff's Complaint.
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2 **First Affirmative Defense**

3 This matter is subject to dismissal based on abstention principles in that this Court has the
4 power to refrain from hearing cases based on “scrupulous regard for the rightful independence of the
5 state governments’ and for the smooth working of the federal judiciary” [*Quackenbush v. Allstate Ins.*
6 *Co.* (1996) 517 U.S. 706, 718, quoting *Railroad Comm’n of Tex. v. Pullman Co.* (1941) 312 U.S.
7 496, 500–501] because the only relief sought is for equitable or discretionary relief.

8 **Second Affirmative Defense**

9 Plaintiffs’ Complaint fails to state a claim against TIG upon which relief can be granted.

10 **Third Affirmative Defense**

11 To the extent that AIU may have failed to mitigate, minimize or avoid any damages it
12 allegedly sustained, any recovery against TIG must be reduced by that amount.

13 **Fourth Affirmative Defense**

14 As a separate and affirmative defense to the Complaint and without admitting that the terms,
15 conditions and exclusions of an insurance policy must be pled in an affirmative defense, TIG alleges
16 that coverage for the claims that are the subject of this action is precluded, in whole or in part, by
17 reason of the terms, conditions, provisions, limitations, endorsements and exclusions of the TIG
18 policy.

19 **Fifth Affirmative Defense**

20 TIG alleges that its obligations in connection with the underlying action, if any, must be
21 apportioned among all of the responsible insurers including, without limitation, Plaintiffs.

22 **Sixth Affirmative Defense**

23 As a separate affirmative defense, TIG alleges that Plaintiffs’ damages, if any, were caused by
24 or contributed to by the acts, errors and omissions of Plaintiff and/or other individuals or entities, and
25 that Plaintiff’s recovery against TIG, if any, must be reduced accordingly.

26 **Seventh Affirmative Defense**

27 Without admitting that the subject matter of this paragraph must be pled as an affirmative
28 defense, TIG alleges that the Plaintiff may not recover from TIG any amounts for which payments

1 have been made to or are collected by Plaintiff from third parties to this litigation, and Plaintiff's
2 recovery, if any, against TIG must be reduced by the payments that have been made by such third
3 parties.

4 **Eighth Affirmative Defense**

5 Plaintiff's claims against TIG are barred by the applicable statutes of limitations.

6 **Ninth Affirmative Defense**

7 Plaintiff, as an excess insurer, is bared from filing a claim for contribution. *Fireman's Fund*
8 *Ins. Co. v. Maryland Cas. Co.*, 65 Cal. App. 4th 1279, 77 Cal. Rptr. 2d 296 (1st Dist. 1998)

9 **Tenth Affirmative Defense**

10 Any defense and/or indemnity payments made by plaintiff on behalf of Royal were made as a
11 volunteer, and plaintiff may not seek reimbursement from TIG for monies voluntarily incurred.

12 **Eleventh Affirmative Defense**

13 As a subrogee, plaintiff has no greater rights than those of Royal and American Safety; and
14 therefore, plaintiff may not pursue TIG for any claims that may be barred by the statute of limitations
15 applicable to Royal or American Safety.

16 **Twelfth Affirmative Defense**

17 TIG alleges that it may have additional defenses that cannot now be articulated and, therefore,
18 TIG reserves its right to amend the Answer.

19
20 **WHEREFORE** TIG requests a judgment as follows:

- 21 1. That Plaintiff take nothing by reason of its Complaint;
 - 22 2. A declaration that defendant TIG has no obligation to AIU for any amount claimed in
23 Plaintiff's Complaint;
 - 24 3. That defendant TIG be awarded costs of suit incurred herein; and
 - 25 4. For such other and further relief as the Court deems appropriate.
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1 DATED: June __, 2008

LAW OFFICES OF SEMHA ALWAYA

2 By: _____

3 Semha Alwaya

4 Attorney for Defendant TIG INSURANCE

5 COMPANY ERRONEOUSLY SUED

6 HEREIN AS TIG SPECIALTY INSURANCE

7 COMPANY


REQUEST FOR JURY TRIAL

TIG hereby requests trial by jury.

DATED: June 27, 2008

LAW OFFICES OF SEMHA ALWAYA

By:


Semha Alwaya

Attorney for Defendant TIG INSURANCE
COMPANY ERRONEOUSLY SUED
HEREIN AS TIG SPECIALTY INSURANCE
COMPANY